

Members

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Sen. David Ford
Sen. James Arnold
Sen. John Broden
Rep. Kreg Battles
Rep. Philip GiaQuinta
Rep. Robert Behning
Rep. Ralph Foley
Hon. John G. Baker
Michael McMahon
Jerry Bonnet
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Robert S. Schein



CODE REVISION COMMISSION

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Authority: IC 2-5-1.1-10

MEETING MINUTES¹

Meeting Date: October 25, 2007
Meeting Time: 10:10 A.M.
Meeting Place: State House, 200 W. Washington St., Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Philip GiaQuinta, Acting Chair; Sen. David Ford; Sen. James Arnold; Rep. Kreg Battles; Rep. Robert Behning; Rep. Ralph Foley; Hon. John G. Baker; Michael McMahon; Jerry Bonnet; Robert S. Schein.

Members Absent: Sen. John Broden; Sen. Sue Landske; Jason Thompson; Betsy Burdick.

Staff Present: Mr. John Stieff, Director, Office of Code Revision, Legislative Services Agency; Mr. Craig Mortell, Deputy Director, Office of Code Revision; Mr. Steve Wenning, Senior Staff Attorney, Office of Bill Drafting and Research; Mr. Dick Sheets, Editorial Assistant, Office of Code Revision; Mr. John Kline, Attorney, Office of Code Revision.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

I. CALL TO ORDER

The meeting was called to order at 10:10 a.m. by Representative Philip GiaQuinta, Acting Chair.

II. INTRODUCTORY REMARKS

Mr. John Stieff, Director, Office of Code Revision, Legislative Services Agency, presented items for discussion by the Commission. The outline of items included revision of the Administrative Rules Drafting Manual, the preliminary draft (part II) of the 2008 technical corrections bill, and the preliminary draft of the Indiana Code Title 15 recodification project.

III. REVIEW OF MINUTES

The Commission reviewed the minutes of the Commission's last meeting on August 16, 2007, and there were no questions. The Commission approved the minutes by consent.

IV. DISCUSSION OF ITEM FOR TECHNICAL CORRECTIONS BILL

Committee chairperson Representative GiaQuinta announced that he was departing from the meeting's printed agenda to allow the Commission to consider the request of Representative Lawrence Buell that certain provisions be added to the 2008 technical corrections (TC) bill. Representative Buell then addressed the Commission.

Representative Buell made the following points:

During the 2007 session he worked to enact legislation under which an individual who had served as a judge and then as a magistrate could be given service credit, which would count toward the individual's retirement benefits, based on the individual's service as a magistrate.

He was involved in legislative action concerning House Bill 1480 and Senate Bill 128, both of which, as enacted, amended the law concerning judges' pensions. However, after the 2007 session ended he became aware that the changes made in the judges' pension law by House Enrolled Act 1480 and Senate Enrolled Act 128 did not achieve his objective. The law had been amended to allow an individual who served as a judge and then as a magistrate to be given service credit counting toward the individual's retirement benefits based on the individual's service as a magistrate. However, this change applied only to a participant in the 1977 Judges' Retirement, Disability, and Death System (IC 33-38-7) and did not apply to a participant in the 1985 Judges' Retirement, Disability, and Death System (IC 33-38-8). It had been Representative Buell's intention that this change should apply to participants in the 1985 System.

There was confusion during the 2007 session as to whether the law concerning the 1977 System (IC 33-38-7) or the law concerning the 1985 System (IC 33-38-8) was being amended. A fiscal impact statement for House Bill 1480 (copies of which were provided to the members of the Commission) seemed to indicate that the change being made concerning recognition of service credit based on service as a magistrate would apply to participants in the 1985 System.

Representative Buell asked the Commission to include in the 2008 TC bill provisions that would amend the 1985 System law (IC 33-38-8) to allow an individual who was a participant in the 1985 System and who served as a judge and then as a magistrate to be

given service credit counting toward the individual's retirement benefits based on the individual's service as a magistrate.

Representative Robert Kuzman, the author of House Enrolled Act 1480, appeared before the Commission and spoke in support of Representative Buell's request. He confirmed that the changes made in the text of House Bill 1480 by the House Ways and Means committee concerning credit for service as a magistrate had been intended to apply to participants in the 1985 System. Representative Kuzman stated that the intention of the legislators working on House Bill 1480 had been to make the 1977 System law (IC 33-38-7) and the 1985 System law (IC 33-38-8) more harmonious, not to make them different on matters like credit for service as a magistrate. In response to a question from Representative Foley, Representative Kuzman, who mentioned that he was himself a former chairperson of the Code Revision Commission, expressed the opinion that adding Representative Buell's provisions to the TC bill would not constitute the introduction of a substantive matter into the TC bill.

Commission members discussed Representative Buell's request.

Judge Baker spoke in favor of assenting to the request, saying that Representative Buell's proposed TC bill provisions were of a technical nature in that very few, if any, participants in the 1977 System were in a position to benefit from the 2007 changes in the law relating to credit for service as a magistrate and that this suggests that the General Assembly meant for the 2007 changes to apply to the 1985 System law (IC 33-38-8) rather than to the 1977 System law (IC 33-38-7).

Senator Ford expressed support for the concept of making the 2007 changes apply to participants in the 1985 System but said he could not support doing this through the TC bill because it would go beyond what should be done through the TC bill.

Representative Behning spoke of Representative Buell's proposed TC bill provisions as "a little more than we've traditionally dealt within the TC bill" but said that he was willing to accede to Representative Buell's request.

Representative Foley also expressed a willingness to add the provisions to the TC bill. He spoke of the reported confusion during the 2007 session over which law was being amended as justifying the inclusion of the provisions in the TC bill, saying that this made the provisions similar to other corrections routinely included in the TC bill such as corrections of erroneous citations and internal references.

John Stieff, the director of the Office of Code Revision (OCR), addressed the Commission. He expressed discomfort at having to speak in opposition to the proposed insertion of the provisions into the TC bill. However, he reminded the Commission that OCR applies a four-part test in deciding whether a provision is appropriate for inclusion in a TC bill draft to be brought before the Commission. Under this test, he said, a provision is not considered appropriate for inclusion unless:

- (1) it is clear that the provision addresses a true mistake or problem of some sort;
- (2) there is only one way in which the mistake or problem can be corrected;
- (3) the one way of correcting the mistake or problem is apparent on the face of the Code section in question and other Indiana Code provisions; and

(4) the provision will not make a substantive change in the law.

Mr. Stieff stated that the provisions proposed by Representative Buell for insertion into the TC bill would not satisfy this four-part test because there are multiple ways in which the mistake or problem in question could be corrected (should the TC bill merely amend the 1985 System law in the same way that the 1977 System law was amended in 2007, or should the TC bill both amend the 1985 System law and reverse the changes that were made in the 1977 System law in 2007?) and because the provisions would make a substantive change in the law.

However, Mr. Stieff said that he was merely offering an analysis of Representative Buell's proposed TC bill provisions under the criteria that OCR uses in deciding whether to submit other proposed TC bill provisions for the Commission's approval, and that the Commission has the authority to include in the TC bill any provision it chooses to include.

The Commission voted on the question of whether to include in the 2008 TC bill provisions that would amend the 1985 System law (IC 33-38-8) to allow an individual who was a participant in the 1985 System and who served as a judge and then as a magistrate to be given service credit counting toward the individual's retirement benefits based on the individual's service as a magistrate. Commission members decided this question in the affirmative by a vote of nine in favor to one opposed. Upon a question from Mr. Stieff, the Commission instructed the staff to undo the changes to the 1977 Judges' Pension System Law made in the 2007 session.

V. REVISION OF ADMINISTRATIVE RULES DRAFTING MANUAL

Steve Barnes, Managing Editor of the Indiana Register and Administrative Code, Legislative Services Agency, presented materials concerning revision of the Administrative Rules Drafting Manual. Mr. Barnes stated that the Manual was last amended in 1997 and there have been substantial changes to the statutory requirements concerning the rulemaking process and to the method of promulgating and disseminating these rules to the public. Mr. Barnes stated that new rulemaking procedures have been put in place to facilitate the new processes and the procedures are a result of a collaborative effort among the Legislative Services Agency, the office of the Governor, the office of the Attorney General, and over 100 agencies with active rulemaking authority.

Mr. Barnes discussed the details of the individual Manual revisions. Mr. Barnes noted that the procedures now require submission of rules electronically. Senator Ford stated that agencies may use different formats now or in the future and asked if the language should allow for these different formats. Judge Baker agreed and suggested inserting language to cover any other formats used by the agencies. Mr. Barnes agreed to insert this language in the submission procedures and Manual wherever applicable.

Mr. Barnes explained changes to the document submission process, economic impact statements, and changes in notices of public hearings. He noted that after 2006, rules are submitted to the governor's office and the attorney general on a CD. Mr. Barnes then discussed changes to the notice of intent to readopt rules and inclusion of several rules that were previously absent from the Manual. Additionally, he relayed several publishing and document procedures that were changed regarding fonts, page size, underlining, digests and others. Mr. Barnes concluded by noting the change to a Typical Document Identification Number (DIN) system to catalog and document the rules submitted. Representative Foley inquired whether the DIN has any correlation to Indiana Code cite

numbers or underlying authority, and Mr. Barnes responded that it does not.

Senator Ford commended the staff for the hard work and noted that the changes have helped move the system for adopting administrative rules into the modern age. The Commission approved the changes to the Administrative Rules Drafting Manual by consent.

VI. TECHNICAL CORRECTIONS BILL

The Chairman, Representative GiaQuinta, then recognized Craig Mortell, Deputy Director of the Office of Code Revision (OCR), for the discussion of PD 3242, the second 2008 technical corrections (TC) bill draft, which was prepared for discussion at the meeting. Mr. Mortell, drawing the Commission's attention to the SECTION-by-SECTION outline of PD 3242, made the following points:

- Fifty-nine SECTIONS present in PD 3242 were also included in the first 2008 TC bill draft, which was discussed at the Commission meeting of August 16, 2007, and those SECTIONS were marked in the outline to distinguish them from the SECTIONS being presented to the Commission for the first time.
- Sixty-seven SECTIONS in PD 3242 resolve "conflict" situations -- that is, the type of situation that arises when two or more acts amend the same section of the Indiana Code without recognizing each other's existence. This represents nearly all of the conflict-resolving SECTIONS that should be included in the 2008 TC bill. The third 2008 TC bill draft, which will be presented to the Commission at its final 2007 meeting, will contain two other conflict-resolving SECTIONS that were withheld from PD 3242 because OCR needed to confer with the Department of Financial Institutions to ensure that these SECTIONS had been drafted correctly.
- PD 3242 resolves problems that arose in the 2007 session when certain new chapters being added to the Indiana Code were given identical chapter numbers within the same title and article and when certain new sections being added to the Indiana Code were given identical section numbers within the same title, article, and chapter.
- The third 2008 TC bill draft, which will be presented to the Commission at its final 2007 meeting, will contain fewer than one hundred new SECTIONS, and most of its SECTIONS will resolve relatively minor technical problems that were recognized by proofreaders and noted in the "daily action files" of the 2007 enrolled acts.

Mr. Mortell also said the following about two matters carried over from the Commission's meeting of August 16, 2007:

[1] Commission member John Okeson, at the August 16 meeting, raised a question about SECTIONS in the draft under discussion that amended IC 36-8-22-13, IC 36-8-22-14, and IC 36-8-22-16. These Code sections include references to "an agreement ... under section 12 of this chapter", and it had been brought to OCR's attention that section 12 of the chapter (i.e., IC 36-8-22-12) does not provide for entering into a written agreement and that the references to "an agreement ... under section 12 of this chapter" are therefore faulty. To address this problem, the draft under discussion amended IC 36-8-22-13, IC 36-8-22-14, and IC 36-8-22-16 so as to change "an agreement ... under section 12 of this chapter" to "an agreement ... under this chapter". Mr. Okeson pointed out, however, that this change might tend to make the reader believe that sections of the chapter *other than* section 12 specifically provide for entering into a written agreement when in fact this is not the case. Having considered this matter since the August 16 meeting, OCR acknowledges the correctness of Mr. Okeson's point. Consequently, the SECTIONS amending IC 36-8-22-13,

IC 36-8-22-14, and IC 36-8-22-16 will not appear in any other drafts of the 2008 TC bill.

[2] Representative Ralph Foley, at the August 16 meeting, inquired about a conflict-resolving SECTION in the draft under discussion that amended IC 6-1.1-12.4-2 (part of the property tax law) and contained a provision in which the date "March 2, 2009" was being changed to "March 2, 2007". Representative Foley and Senator David Ford urged the use of great care in dealing with IC 6-1.1-12.4-2 and Senator Landske, as Acting Chairperson, directed staff to double-check its work on this SECTION. Having double-checked this SECTION since the August 16 meeting, OCR believes that the SECTION was correctly prepared in accordance with standard conflict-resolution procedures.

Mr. Mortell said he would be happy to try to answer any questions about PD 3242 that Commission members or anyone else may ask, either during or after the meeting.

VII. RECODIFICATION OF TITLE 15

Mr. Steve Wenning, Senior Staff Attorney, Office of Bill Drafting and Research, Legislative Services Agency, stated that he continued to work with the agencies and universities to draft and revise the recodification of Title 15. Mr. Wenning then presented queries for review by the Commission. The first query concerned IC 15-1-2-12(b). Mr. Wenning proposed including a revision to strike the dollar amount in the subsection because all counties far exceed the amount necessary for the threshold. The Commission consented to include the revision in a trailer bill. Second, IC 15-1-3-1(a) included a reference to an attestation before a magistrate. The Commission agreed that the intention was to have the certification notarized and that the use of the term "magistrate" was outdated. The Commission consented to use the phrase "person authorized under law to administer an oath" in the recodification bill. Mr. Wenning then proposed a revision in IC 15-1-3-2(a) to clear ambiguity and to allow the terms "the society considers proper" to apply to all three general subject areas which could receive cash awards. The Commission agreed by consent to accept the proposed revision in the recodification bill.

Mr. Wenning then presented an issue in IC 16-1-6-2. The language required counties to publish a petition in a newspaper of general circulation printed and published in the county. Mr. Wenning noted that with the development of centralized newspaper printing, many counties do not have a newspaper printed in the county. Mr. Wenning proposed changing the language to reference a "qualified publication", and the Commission consented to the change in the recodification bill.

Mr. Wenning noted that IC 15-2.1-7-5 required certain animals to be marked that react positively to a tuberculin test, but that a tampering and altering prohibition only applied to cattle as written. He suggested that goats and cervids were also to be included. The Commission agreed by consent to include the change in the recodification bill.

Mr. Wenning noted an inconsistency in IC 15-2.1-15-4 in which two subsections conflicted. He suggested striking the first sentence of subsection (c). After some discussion, the Commission consented to including the change in a trailer bill.

Mr. Wenning presented a suggested revision to IC 15-2.1-18-10 to provide that a person who owns an animal shall report the existence of a disease within forty-eight hours of suspecting a disease. The Commission agreed to include the item in a trailer bill by consent.

In IC 15-2.1-23-1, Mr. Wenning suggested removing subsection (b) since subsection (a) provides the same prohibitions and applies to the permittees mentioned in subsection (b). The Commission agreed by consent to the removal of subsection (b) in the recodification

bill.

Mr. Wenning drafted a revision to fix a gap in dates in IC 15-4-10-26.5, and the Commission agreed by consent to include the revision in the recodification bill.

The last line of IC 15-5-1.1-8 contains obsolete language, and Mr. Wenning proposed deleting it. The Commission agreed by consent to include the revision in the recodification bill.

Mr. Wenning contended that IC 15-5-3-3 applies to a fair association organized before March 6, 1889 if the association meets the requirements in section 1 when it was organized. Mr. Wenning suggested adding a new subsection to cover this interpretation. Representative Foley noted that he did not want to strike a fair association that had been in existence for a long period. Mr. Wenning responded that the revision assumes that at least one association exists. Mr. Mike McMahon noted that the suggested revision did not insert a letter "(a)" for subsection (a) in the draft. Mr. Wenning agreed that this should be added. The Commission agreed by consent to the addition in the recodification bill.

Mr. Wenning noted obsolete law in IC 15-7-1-19, and the Commission agreed by consent to removing the language in the recodification bill.

Finally, Mr. Wenning presented an issue regarding IC 15-7-1-23. He suggested that the limitation of membership in the current law should be extended to stockholders also. Representative Foley, Mr. Jerry Bonnet, and Judge Baker expressed reservations about making this change in the law. John Stieff agreed that the staff should gather more information on the proposed change.

Mr. Wenning presented an updated outline for the recodification bill and noted that the department of agriculture had submitted ten potential changes. Mr. Wenning had agreed to six of the changes, including moving some material to Article 11 involving the duties of the agency.

Public comment on the recodification bill was submitted. Elisha Modisett, department of agriculture, spoke on the bill. She noted two points for the Commission to consider. One was to move the duty related to regulation of grain buyers and division of soil to the Department of Agriculture section instead of the department of natural resources in Title 26. Mr. Bonnet asked if the same types of entities are regulated under the two items mentioned. Ms. Modisett stated that both items covered mostly farm owners and land owners mitigating soil. Mr. Wenning noted that the law in Title 26 covered warehouses and that this is consistent because the Code is grouped by subject matter and not by who is regulated or by regulating agency. Mr. Wenning stated that he could include a cross reference in Title 15 to the provision in Title 26.

John Ball, Purdue University, thanked the Commission and the staff for their work. He noted that he is continuing to work with Mr. Wenning on a bill to clean up some issues and inconsistencies they found in the current law regarding agriculture.

VIII. OTHER BUSINESS

The timing for the next Commission meeting was discussed. The Commission scheduled the next meeting for December 12, 2007 at 1:30 p.m. Representative GiaQuinta thanked the members, staff, and participants present.

IX. ADJOURNMENT

The meeting was adjourned by Representative GiaQuinta at 12:25 p.m.